ACUMEN LEGAL ADVISORS

PLLC

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VIA FAX (202) 219-3923

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington D.C. 20463

RE: MUR #6794- Integrity Exteriors & Remodelers, Inc. Response Letter

Dear Mr. Jordan:

I represent Integrity Exteriors & Remodelers, Inc., ("Integrity"), in the above-captioned MUR.

As detailed below, the primary allegations concerning my client in the Complaint arise from a misunderstanding between the Mr. Emmer, Emmer for Congress, and Karin Housley, as Treasurer (collectively, the "Campaign") and Integrity about a video testimonial offered by Mr. Emmer. In late September 2013, a commercial was broadcasted with Mr. Emmer commenting on the construction work provided by Integrity (the "Integrity Ad").

After the broadcast, upon the Campaign's request, Integrity submitted an invoice to the Campaign in the total amount of $850.00, which was promptly paid in full. Given the *de minimis* nature of any possible violation, this case does not warrant use of the Commission's resources and should be dismissed.

Additionally, based on the details below, there is no reason to believe a violation occurred with respect to the allegations of the Complaint and the Commission should not take any action against Integrity and should close this file. The Commission should exercise its prosecutorial discretion to dismiss this Complaint.

FACTUAL BACKGROUND

Integrity performed construction work and made repairs to a commercial property that Mr. Emmer leased as office space. Mr. Emmer agreed to help Integrity by giving complementary reviews of the work it did to the property through a video testimonial. After broadcasting the Integrity Ad, Integrity submitted an invoice for $850 to the Campaign—which it reported on its October Quarterly Report filed on October 15, 2013 as an unpaid obligation—and the Campaign promptly paid this invoice.

THE COMPLAINT

The Complaint alleges violations of "11 C.F.R. § 114.2(a) and 11 C.F.R. § 110.11(iiab) [sic]" (Compl. ¶ 3) based on the Integrity Ad involving Mr. Emmer. 11 C.F.R. § 114.2(a) applies only to "[n]ational banks and corporations organized by authority of any law of Congress." Because Integrity is not a national bank or federally-organized corporation, this provision is inapplicable.

office 651.224.9000 fax 651.305.5557 web www.acumenlegaladvisors.com
992 Inwood Avenue North · Oakdale, Minnesota 55128

11 C.F.R. § 110.11(iiab) is an improper citation. Although the Complaint does not cite the correct statutes and regulations, based on the language and allegations in the Complaint, it appears the Complaint is alleging violations of two legal provisions: the prohibition on corporate contributions in 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b) and the disclaimer requirements in 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(c)(3)(ii). (Compl. ¶ 3 (citing erroneously to "11 C.F.R. §114.2(a) and 11 C.F.R. §110.11(iiab) [sic]").

The Complaint does not allege that the Integrity Ad contained any words of advocacy for Mr. Emmer's campaign, instead noting that it was "a recommendation that listeners call Integrity if they need remodeling, siding or general construction work done." (Compl. ¶ 8; *see also id.* ¶ 9 (quoting full text of ad)). The Integrity Ad did, however, identify Mr. Emmer as a candidate for Congress and included an image of an "Emmer for Congress" campaign sign carrying a visible disclaimer stating "Paid for by Emmer for Congress." (*Id.* ¶ 8.) The Complaint asserts that these facts "strongly suggest[] a political purpose for the ad." (*Id.* ¶ 10.)

Although the Complaint alleges, based on news reports, that the Campaign "paid the costs of airing the ad" in the amount of $850, it nevertheless asserts, without further explanation or legal citation, that "the arrangement suggests there may have been an illegal in-kind corporate contribution by Integrity." (Compl. ¶¶ 11-12.) In addition, the Complaint alleges that "the ad is a public communication of the Emmer campaign" and therefore "it would require a disclaimer." (*Id.* ¶ 13.)

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ANALYSIS

I. There is no reason to believe Integrity paid a corporate contribution to the Campaign.

The Integrity Ad was not a "contribution" because the Campaign promptly paid Integrity its costs. Corporate contributions and expenditures are prohibited in 2 U.S.C. § 441b(a), which bars "any corporation" from "mak[ing] a contribution or expenditure in connection with" any federal election. *See also* 11 C.F.R. § 114.2(b)(1) ("Any corporation . . . is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any federal election.").

A contribution or expenditure is defined, as relevant here, as "anything of value . . . to any candidate . . . in connection with any [congressional] election . . . or for any applicable electioneering communication." 2 U.S.C. § 441b(b)(2); *see also* 11 C.F.R. § 114.1(a)(1). The regulations contemplate that a corporation does not make a contribution or expenditure when a campaign promptly pays it for goods and services rendered. *See, e.g.,* 11 C.F.R. § 116.3. Integrity submitted an invoice in the amount of $850.00, which was promptly paid by the Campaign after the airing of the Integrity Ad.

A communication can be a contribution if it is considered either a "coordinated communication" as defined by 11 C.F.R. § 109.21 or an "electioneering communication" as defined by 2 U.S.C. § 434(f)(3) and 11 C.F.R. § 100.29. *See* 2 U.S.C. § 441b(b)(2) (including electioneering communications); 11 C.F.R. § 109.21(b) (1) ("A payment for a coordinated communication . . . is an in-kind contribution."). Because none of the relevant communications here occurred within

the statutory "electioneering communication" window (*see* 2 U.S.C. § 434(f)(3)(A)(ii)(II)), the only relevant provision is the "coordinated communication" provisions of 11 C.F.R. § 109.21.

There is a three-prong test for determining whether a communication is a coordinated communication. A coordinated communication is one that (1) "[i]s paid for . . . by a person other than the candidate [or] authorized committee" (the "Payment Prong"); (2) "[s]atisfies one of the content standards in" § 109.21(c) (the "Content Prong"); and (3) "[s]atisfies one of the conduct standards in" § 109.21(d) (the "Conduct Prong"). 11 C.F.R. § 109.21(a).

In order for the Integrity Ad to be considered a contribution or expenditure, it must satisfy the three-prong test for a coordinated communication in 11 C.F.R. § 109.21. Although the Integrity Ad may have arguably met the Content Prong and Conduct Prong because it contained an image of an Emmer for Congress campaign signs and Mr. Emmer participated in its filming, it did not meet the Payment Prong because the Campaign promptly paid all costs. *See* 11 C.F.R. § 109.21(a)(1); *see also* First General Counsel's Report in MUR 5410 at 8-10 (Oberweis for Senate) (Nov. 12, 2004) (finding no reason to believe a corporate contribution had occurred when campaign promptly paid corporation for costs incurred).

Accordingly, there is no reason to believe that Integrity made a prohibited corporate contribution or expenditure.

II. There is no reason to believe Integrity contributed to the Campaign violating disclaimer requirements.

The disclaimer requirement in 2 U.S.C. § 441d(a) applies to "communications expressly advocating the election or defeat of a clearly identified candidate, or solicit[ing] any contribution." *See also* 11 C.F.R. § 110.11(a) (limiting scope of disclaimer requirement to "public communications . . . made by a political committee," as well as express advocacy, solicitation, or electioneering communications).

Such express advocacy or solicitation communications must contain certain disclaimers, depending on whether the communications are "authorized" by the candidate or campaign. 2 U.S.C. § 441d(a)(1)-(3). In particular, if authorized express advocacy and solicitation communications are made by television, the disclaimer must include "a statement that identifies the candidate and states that he or she has approved the message." 11 C.F.R. § 110.11(c)(3)(ii).

Although the Complaint alleges that the Integrity Ad should have contained a disclaimer "stating Mr. Emmer authorized the message" (Compl. ¶ 13), the disclaimer provisions do not apply to the Integrity Ad because it was not an express advocacy or solicitation communication, and therefore it falls outside the scope of 2 U.S.C. § 441d(a). As discussed above, the purpose of the Integrity Ad was to recommend Integrity to listeners who were looking for remodeling, siding, or general contracting work do be done to their properties, not to further the campaign of Mr. Emmer.

In addition, Integrity intentionally aired the Integrity Ad without the prior knowledge and review of it by the Campaign. Because the Campaign did not "authorize" the Integrity Ad, it could not have included a disclaimer stating that the candidate "has approved the communication," as required by 11 C.F.R. § 110.11(c)(3)(ii).

III. Given the *de minimis* nature of any arguable violation, the Complaint should be dismissed based upon prosecutorial discretion.

Even if there is an arguable *de minimis* technical violation, Integrity should not be prosecuted for this minute violation. The United States Supreme Court in 1985 stated that an agency has discretion on which violations to prosecute. *Heckler v. Chaney*, 470 U.S. 821 (1985). The agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement agent requested best fits the agency's overall policies, and indeed, whether the agency has enough resources to undertake the action at all. *Id.* at 831. In the event that the Commission determines the Integrity Ad was a violation, the Integrity Ad was a one-time advertisement and both parties have learned a great deal about the laws surrounding elections. Further prosecution of this case is unnecessary and likely not the best use of the agencies limited funds and resources.

CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that a violation occurred and should promptly dismiss the complaint.

Sincerely,

C. Alden Pearson